

REPRESENTATIVE FOR PETITIONER: Mark Matkovic, *pro se*
REPRESENTATIVES FOR RESPONDENT: Lisa Garoffolo, Assessor
Peggy Lewis, Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Mark J & Nina F Matkovic)	Petition:	06-005-15-1-5-00604-16
)		
Petitioners,)	Parcel:	06-04-07-000-002.024-005
)		
v.)	County:	Boone
)		
Boone County Assessor)	Assessment Year:	2015
)		
Respondent.)		

Appeal from the Final Determination of the
Boone County Property Tax Assessment Board of Appeals

January 29, 2018

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

INTRODUCTION

1. In this assessment appeal, neither party offered any probative evidence of the property’s market value-in-use. Because the Boone County Assessor had the burden of proof, Indiana Code § 6-1.1-1-17.2 requires that the assessment revert to the previous year’s level.

PROCEDURAL HISTORY

2. The Matkovics' property is located at 6759 Old Hunt Club Road in Zionsville. They filed an appeal with the Assessor challenging their 2015 assessment, which valued the property at \$679,600. After being unable to reach an agreement with the Assessor, the Matkovics brought their case before the Boone County Property Tax Assessment Board of Appeals ("PTABOA"), which issued a determination increasing the assessment to \$851,100. The Matkovics then filed a Form 131 petition with the Board, opting out of our small claims procedures.
3. On October 31, 2017, our designated administrative law judge, Kyle C. Fletcher, held a hearing on the petition. Neither he nor the Board inspected the property.
4. Mark Matkovic appeared pro se. Boone County Assessor Lisa Garoffolo appeared on her own behalf. Her deputy assessor, Peggy Lewis, also attended. All three were sworn as witnesses.
5. The Matkovics offered the following exhibits:
 - Petitioners' Ex. 1: Spreadsheet titled "Neighborhood Comparison Assessment Value Increase" with heading for "Next Door Neighbors" and "Near By Neighbors" and Boone County Appeal Worksheet
 - Petitioners' Ex. 2: Neighborhood Comparison Assessment Value Increase spreadsheet with additional heading for "Rest of Neighborhood"
 - Petitioners' Ex. 3: Property Record Card ("PRC") for 6742 Old Hunt Club Road
 - Petitioners' Ex. 4: Comparative Market Analysis 2014 for 6759 Old Hunt Club Road and Comparative Market Analysis 2015 for 6759 Old Hunt Club Road
 - Petitioners' Ex. 5: Handwritten Assessment History, Form 11 Notices of Assessment for 2011-2013, Form 115 notice, Notice of Final Determination and excerpts from written decision in *Matkovic v. Boone Cnty. Ass'r*, pet. no. 06-003-11-1-5-

00101 (IBTR Feb. 20, 2013); Listing of Board decisions for February 2013

6. The Assessor submitted the following exhibits:
- Respondent's Ex. 1: Boone County Appeal Worksheet
 - Respondent's Ex. 2: 2015 PRC for 6759 Old Hunt Club Road
 - Respondent's Ex. 2A: Printout for 6759 Old Hunt Club Road
 - Respondent's Ex. 2B: Property Detail for 6759 Old Hunt Club Road
 - Respondent's Ex. 3: Notice of Preliminary Hearing on Appeal
 - Respondent's Ex. 4: Form 134 Report to PTABOA of Preliminary Meeting
 - Respondent's Ex. 5: Form 114 hearing notices
 - Respondent's Ex. 6: 2015 Form 115 determination
 - Respondent's Ex. 7: Comparative Market Analysis 2013-2015
 - Respondent's Ex. 8: 2015 Form 131 petition
 - Respondent's Ex. 9: IBTR hearing notice
7. The following items are officially recognized as part of the record of the proceedings and labeled Board Exhibits:
- Board Ex. A: Form 131 Petition for Review
 - Board Ex. B: Hearing sign-in sheet

We also recognize as part of the record all notices and orders issued by the Board or our ALJ and a digital recording of the hearing.

ASSESSOR'S CONTENTIONS

8. The Matkovics' home was built in 2000 on a 2.25-acre lot. It is part brick and part frame, with a large three-car garage, a basement, and 5,078 square feet above grade. *Garoffolo Testimony, Lewis testimony, Resp't Exs. 2, 2A-B.*
9. To find the value of the Matkovics' home, the PTABOA relied on a spreadsheet the Matkovics provided and calculated an average price of \$167.61/sq. ft. It then multiplied that price by the above-grade area in the Matkovics' home to reach a market value of \$851,100. *Resp't Ex. 6.*

10. The Assessor offered a document labeled “Comparative Market Analysis.” It included information for three homes on Old Hunt Club Road that sold during the two years leading up to the March 1, 2015 assessment date. She used two years instead of just one to be more equitable. The analysis reported the size and age of each home as well as the number of bathrooms and bedrooms they had. The properties sold for prices ranging from \$174/sq. ft. to \$309/sq. ft., with an average of \$224/sq. ft. *Garoffolo testimony, Resp’t Ex. 7.*
11. Mr. Matkovic claimed that the analysis incorrectly listed the size of one of the homes. Assuming he was correct, the average of the three sale prices would drop to \$191/sq. ft. That is still higher than the value the PTABOA used. *Lewis testimony, Resp’t Ex. 7, Pet’rs Ex. 3.*
12. The Matkovics bought the property for \$567,000 in 2010. The seller was Aurora Loan, LLC, which acquired the property through a sheriff’s sale. Thus, the Assessor claims that the Matkovics “bought some instant equity.” Although they had to do mold remediation after the purchase, the Assessor believes that the property was still worth more than the Matkovics paid for it. *Garoffolo testimony, Resp’t Ex. 2.*

MATKOVICS’ CONTENTIONS

13. The Matkovics’ assessment increased 13% between 2014 and 2015, while the assessments for other properties in the neighborhood increased by only 7% to 9%. *Matkovic testimony, Pet’rs Exs. 1-2.*
14. The Assessor used incorrect data in her comparative market analysis. She listed 6742 Old Hunt Club Road as having 3,000 square feet when it really has 4,418 square feet. *Matkovic testimony, Resp’t Ex. 7, Pet’rs Ex. 3.*

15. The Matkovics offered two comparative market analyses for their property. Those unsigned documents identify Bill Henderson as the preparer. They also contain a disclaimer indicating that they should not be considered as appraisals and that the preparer did not follow the guidelines contained in the Uniform Standards of Professional Appraisal Practice (“USPAP”). When asked if he got the analyses from “Zillow,” Mr. Matkovic said he did not know. *Matkovic testimony; Pet’rs Ex. 4.*

16. The first analysis includes four sales from 2013 and 2014. It identifies most of the same property characteristics the Assessor identified in her analysis. Henderson computed an average sale price of \$698,475 and then adjusted that average price to account for differences between the Matkovics’ property and the other properties. For example, the other properties, on average, had one half-bath, while the Matkovics’ had two half-baths. Using a unit value of \$1,000 per half-bath, Henderson added \$1,000 to the average sale price. Henderson did not explain how he quantified any of his unit values. The average adjusted sale price was \$740,525, which Henderson indicated was the “2014 market value” of the Matkovics’ property. *Matkovic testimony; Pet’rs Ex. 4.*

17. The second comparative market analysis includes six sales from 2015. The average sale price was \$626,827. Henderson purported to use the same methodology for adjustments as he used in his first analysis. But unlike the first analysis, he did not identify the characteristics for which he made adjustments. He instead simply listed an average adjusted sale price of \$684,162, which he indicated was the “2015 market value” of the Matkovics’ property. *Pet’rs Ex. 4.*

BURDEN OF PROOF

18. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of making a prima facie case both that the current assessment is incorrect and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2, also known as the burden-shifting statute, creates two exceptions to that rule.

19. The assessor has the burden of proving the assessment is correct when, among other things, the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property. But the burden-shifting statute does not apply if the assessment under appeal was based on structural improvements, zoning, or uses that were not considered in the prior year's assessment. I.C. § 6-1.1-15-17.2(c). If the assessor has the burden of proof and fails to meet it, the assessment reverts to the prior year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).
20. The Matkovic's' assessment increased by more than 5%, going from \$603,100 in 2014 to \$851,100 in 2015. The parties therefore agreed that the Assessor had the burden.

CONCLUSIONS OF LAW AND ANALYSIS

21. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance ("DLGF") has defined as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." I.C. § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 Ind. Admin. Code 2.4-1-2). Parties may offer evidence that is consistent with the DLGF's definition of true tax value. A market value-in-use appraisal prepared according to USPAP often will be probative. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Parties may also offer actual construction costs, sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. *Id.*; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property tax appeals).
22. When using sales of other properties to prove the value of a property under appeal, a party must (1) identify the relevant characteristics of the property under appeal, (2)

explain how those characteristics compare to the characteristics of the other properties, and (3) explain how any relevant differences affect the properties' market value-in-use. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the sales data lacks probative value. *Id.*

23. The Assessor did not offer any probative evidence to support the assessment. Although her comparative market analysis identified some relevant characteristics of properties from the Matkovics' street that sold in the two years leading up to the assessment date, she did little to compare them to the Matkovics' property. And she did nothing to explain how relevant differences between those properties and the Matkovics' property affected their values. In short, she did not conduct the type of analysis contemplated by *Long* or by generally accepted appraisal principles.
24. The comparative market analyses offered by the Matkovics are similarly unhelpful. We have no information about the person who prepared them. They are not appraisals, and they did not comply with USPAP. That is important because the documents do not explain how Henderson quantified his adjustments. In fact, in the analysis that addressed the relevant assessment year, he did not identify the characteristics for which he applied his adjustments.

FINAL DETERMINATION

25. Because the Assessor failed to meet her burden and there is no probative evidence to show the property's true tax value, the Matkovics' 2015 assessment must revert to the previous year's level of \$603,100.

The Indiana Board of Tax Review issues the Final Determination of the above captioned matter on the date written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.